

**Reg Agenda Entry**  
**Clean Water Act 404 Assumption Update Regulation**

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**OW/OWOW/OWCD**  
**Tier 2 Regulation**

**SAN: 6682**  
**RIN: 2040-AF83**

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**Status**

**Status:** At OMB  
**Reports:**

**Plan Status:** No

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**Reviewers**

**Legal:** ()

**Policy:** ()

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**Internal Abstract**

Instructions: This Internal Abstract is used within EPA but not shared outside of the Agency. It is provided here for comparison purposes. Do not edit this version for the Regulatory Agenda. Edit the External Abstract below.

## **Ex. 5 Deliberative Process (DP)**

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**External Abstract**

Instructions: This External Abstract is the version of the abstract that the public will read in the Regulatory Agenda; this is the version you should edit for your Agenda review.

CWA Section 404(g) provides for state and tribal to assume administration of the dredged and fill permitting program for certain waters and addresses the requirements for implementation and EPA oversight. This rule will provide general updates to the 1988 regulations and provide clarity on specific issue(s) the states have requested. Specifically, states and tribes requested the EPA clarify for which waters the state/tribe has CWA Section 404 permit responsibilities, and for which waters the USACE retains CWA 404 permit responsibility, under an approved state/tribal program. In 2015, EPA convened a Federal Advisory Committee (FACA), comprised of state, tribal and other stakeholder representatives charging them with providing recommendations on how EPA could provide clarity on this issue. This rule will provide clarity on which waters are assumable after consideration of the FACA recommendations as well as provide needed technical corrections and updates to the 1988 regulations.

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**Regulatory Information****Priority Category:****Current Answer:** Substantive, Nonsignificant

Instructions: Select one of the following choices.

<input type="checkbox"/>	Economically Significant
<input type="checkbox"/>	Other Significant
<input type="checkbox"/>	Substantive Nonsignificant
<input type="checkbox"/>	Routine and Frequent
<input type="checkbox"/>	Info/Admin/Other

**Stage of Rulemaking:****Current Answer:** Long-Term Action

Instructions: Select one of the following choices.

<input type="checkbox"/>	Prerule
<input type="checkbox"/>	Proposed Rule
<input type="checkbox"/>	Final Rule Stage
<input type="checkbox"/>	Long-Term Action
<input type="checkbox"/>	Pending
<input type="checkbox"/>	Completed Rule

**CFR Citation:** 40 CFR 404**Legal Authority:** "Not Yet Determined"**Deadlines:****Deadline Description:**

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**Potential Effects****Human Health**

**Question:** Will this action address/concern human health impacts?

Instructions: Answer Yes, No or Undetermined. If Yes, provide an explanation.

**Current Answer:** No

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**Children's Health**

**Question:** Is this action likely to address an adverse impact on childhood lifestages including prenatal (via exposure to women of childbearing age)? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If Yes, indicate if the likely impact is related to Exposure and/or Toxicity, and provide an explanation.

**Current Answer:** No

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**Environmental Justice**

**Question 1:** Does this action involve a topic that is likely to be of particular interest to or have particular impact upon minority, low-income or indigenous populations, or tribes? (Reg DaRRT)

Instructions: Answer Yes, No or Undetermined. If yes, select from options below and provide an explanation.

Selecting No means that this action is not likely to be of particular interest to these populations or tribes. Selecting Undetermined means that, given the information available at this time, the Agency does not know if these populations or tribes will be particularly interested in this action.

**Current Answer:** No

**Question 2:** If you answered Yes to the previous question, place an "X" to the left of at least one:

<input type="checkbox"/>	The action is likely to impact the health of these populations.
<input type="checkbox"/>	The action is likely to impact the environmental conditions of these populations.
<input type="checkbox"/>	The action is likely to present an opportunity to address an existing disproportionate impact on these populations.
<input type="checkbox"/>	The action is likely to result in the collection of information or data that could be used to assess potential impacts on the health or environmental conditions of these populations or tribes.
<input type="checkbox"/>	The action is likely to affect the availability of information to these populations or tribes.
<input type="checkbox"/>	Other reasons. Explain.

**Current Answer:**

Comments:

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**Levels of Government Affected:****Question 1:** Are any levels of government affected? (Reg DaRRT)

[Instructions: Answer Yes, No or Undetermined to indicate whether the action is expected to affect a specific level of government. If Yes, answer the next question.]

**Current Answer:** Yes

**Question 2:** Levels Affected

[Instructions: Place an "X" to the left of at least one level of government if you answered Yes to Question 1.]

	Federal
	State
	Local
	Tribal
	Small

**Current Answer:**

Federal

State

Tribal

**Question 3:** Describe the type of effects.

[Instructions: Place an "X" in at least one of the columns for each affected government level.]

	Likely to be involved in implementation	Likely to be regulated
Federal		
State		
Local		
Tribal		
Small		

**Current answer:**

	Likely to be involved in implementation	Likely to be regulated
Federal	Yes	Yes
State	Yes	Yes
Local		
Tribal	Yes	Yes
Small		

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**Congressional Review Act (under SBREFA):****Question:** Is this action major under CRA?

[Instructions: Answer Yes, No or Undetermined. If Yes, provide an explanation.]

**Current answer:** No

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**Unfunded Mandates:**

**Question 1:** Is this action subject to Section 202 of the Unfunded Mandates Reform Act (UMRA)?

[Instructions: Answer Yes, No or Undetermined. If Yes, answer the next question.]

**Current answer:** No

**Question 2:** If your action is subject to Section 202 of UMRA, please check which category or categories are affected.

[Instructions: Place an "X" to the left of at least one.]

<input type="checkbox"/>	Government
<input type="checkbox"/>	Private

**Current answer:**

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**Regulatory Flexibility Act as Amended by the Small Business Regulatory Enforcement Fairness Act:**

**Question 1:** Is this Action likely to have any impact (positive or negative) on any small entities?

[Instructions: Place an "X" to the left of at least one. If yes, answer the next question.]

<input type="checkbox"/>	No Small Entities Affected
<input type="checkbox"/>	Undetermined
<input type="checkbox"/>	Small Business
<input type="checkbox"/>	Small Government Jurisdictions
<input type="checkbox"/>	Small Non-Profit Organizations

**Current answer:**

No Small Entities Affected

**Question 2:** Is this Action likely to have any adverse economic impact on any small entities?

[Instructions: Place an "X" to the left of at least one. If yes, answer the next question.]

<input type="checkbox"/>	No Small Entities Affected
<input type="checkbox"/>	Undetermined
<input type="checkbox"/>	Small Business
<input type="checkbox"/>	Small Government Jurisdictions
<input type="checkbox"/>	Small Non-Profit Organizations

**Current answer:**

No Small Entities Affected

**Question 3:** Is this Action likely to have a significant adverse economic impact on a substantial number small of small entities (SISNOSE) as defined in the Regulatory Flexibility Act?

[Instructions: Place an "X" to the left of at least one.]

<input type="checkbox"/>	No Small Entities Affected
<input type="checkbox"/>	Undetermined
<input type="checkbox"/>	Small Business
<input type="checkbox"/>	Small Government Jurisdictions
<input type="checkbox"/>	Small Non-Profit Organizations

**Current answer:**

No Reg Flex Analysis Needed

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**Federalism E.O. 13132:**

**Question:** Is this action likely to have federalism implications as defined in E.O. 13132?

[Instructions: Answer Yes, No or Undetermined.]

**Current answer:** Undetermined

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**Energy Impacts:**

**Question:** Is the action likely to have any significant effect on the supply, distribution or use of energy as defined in Executive Order 13211?

[Instructions: Answer Yes, No or Undetermined.]

**Current answer:** No

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**International Impacts:**

**Question:** Will this regulatory action be likely to have international trade and investment effects, or otherwise be of international interest to our trading partners?

[Instructions: Answer Yes, No or Undetermined.]

**Current answer:** No

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**Timetable:**

09/30/2019 - NPRM:

09/30/2020 - Final Rule:

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**Sorting and Reference Information**

**Subject Code:** 70 - Clean Water Act

[Instructions: Select one from 10 – Clean Air Act; 20 – Atomic Energy Act; 25 – Noise Control Act; 3 – General; 30 – FIFRA; 35 – TSCA; 40 – EPCRA; 45 – Chemical Safety Information Relief Act; 50 – RCRA; 55 – Oil Pollution Act; 60 – CERCLA; 70 – Clean Water Act; 72 – SDWA; 76 – MPRSA; 78 – SPA]

**Programmatic URL:**

[Instructions: Optional. Paste a URL to an EPA.gov web page that describes your action.]

**Public Comment URL:**

[Instructions: Optional. Paste a URL to a Regulations.gov web page that offers an opportunity for public comment.]

**Docket #:**

[Instructions: Where available, provide the Regulations.gov docket number assigned to your action.]

**Additional Information:**

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**Affected Industrial Sectors**

Instructions: Choose NAICS codes from the [ [HYPERLINK "http://www.census.gov/eos/www/naics/"](http://www.census.gov/eos/www/naics/) ] (<http://www.census.gov/eos/www/naics/>).

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OAR/OTAQ/ASD OP/NCEE/NCEE ORD/OAA OCSPP/OPPT/OPPT ORD/NCER R06/OAR R05 OGC  
ORD/NRMRL R08 OCSPP/OPP/EFED OCSPP/OPP/RD OCSPP

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1977 734-214-4850 202-566-0000 202-564-5957 202-564-0000 202-564-9678 214-665-7505 312-353-3490  
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